Crl.A. 219/2003

BEFORE

HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr. I.A.Hazarika, learned counsel for the appellant and Mr. P.C.Gayan, learned P.P., Assam.

2. The accused appellant Arun Mahato stands convicted by the learned Sessions Judge, Cachar, Silchar in Sessions Case No.114 /2002 under Section 376 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/-, in default in payment of fine, to undergo further imprisonment for three months. Hence, the present appeal.

3. The victim Smti Sagar Mahato @ Swapna Mahato (PW-5), a young girl, was staying with her uncle Dharani Mahato, serving as Chowkidar in a school. During odd hours Dharani used to be in the school and the girl was all alone in the quarter. The accused used to visit her and one day taking advantage of her loneliness forcibly committed rape on her. Thereafter, the accused threatened her not to disclose this. Thereafter also the accused continued and subjected her to sexual intercourse for about 2/3 occasion in the same manner violating the girl and the girl became pregnant, which forced her to disclose the entire incident to the villagers. Subsequently, the girl gave birth to a child.

4. The entire prosecution rests on the testimony of PW-5. We have perused the same and find that the girl has given a detailed statement as to how the accused forcibly committed rape on her. The girl is aged about 15/16 years, which is also supported by the medical evidence on record.

5. A submission was made that this may be a case of consensual physical relation. But, in view of the age of the girl, the consent is immaterial. The Doctor has also deposed about the pregnancy and as such the statement of the victim stands fully supported and corroborated, therefore, we uphold the conviction under Section 376 IPC.

6. The learned counsel has submitted that considering the age of the accused and the facts and circumstances of the case, some leniency may be shown in the matter of sentence. It is also submitted that the accused person is in jail custody since the date of his conviction i.e. 05.05.2003. On consideration of the facts and circumstances of the case, we reduce the sentence to imprisonment for four years and fine of Rs.1000/-, in default in payment of fine to undergo further imprisonment for one month.

With the above modification in sentence, the appeal stands disposed of.

Send down the record.